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Supreme Court of the United States.

OCTOBER TERM, 1932.

No. 110.

ALBERTO COSTANZO,
PETITIONER,

v.

ANNA C. M. TILLINGHAST,
UNITED STATES COMMISSIONER OF IMMIGRATION.

BRIEF FOR THE PETITIONER.

JURISDICTION.

This case comes to this Court upon a writ of certiorari directed to the United States Circuit Court of Appeals for the First Circuit under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, United States Code Annotated, Title 28, Sec. 347, to review a judgment of that Court affirming the decision of the United States District Court for the District of Massachusetts, dismissing the petition for the writ of habeas corpus, to test the validity of the finding and order of deportation against the petitioner made by the Secretary of Labor on the ground that the petitioner "has been found managing a house of prostitution" in viola-

tion of Section 19 of the Immigration Act of February 5, 1917, United States Code Annotated, Title 8, Section 155.

OPINION OF THE COURT BELOW.

There was no written opinion of the District Court, only an order dismissing the petition (R. 5). The opinion of the Circuit Court of Appeals is reported in 56 Fed. (2d) 566, and appears in this record upon pages 35-40.

THE RECORD.

The petitioner was taken into custody by the immigration authorities July 8, 1931 (R. 2), upon a warrant issued by the Secretary of Labor, March 16, 1926 (R. 4), charging that he was illegally in the country in "that he has been found managing a house of prostitution, or music, or dance hall, or other place of amusement, or resort, habitually frequented by prostitutes." He was given a hearing by an Immigrant Inspector at Providence on the 21st day of January, 1926 (R. 7 and 8), and a further hearing on May 6, 1926 (R. 11-23), and a further hearing June 29, 1927 (R. 25), and recommendation made by the Immigrant Inspector (R. 25) that the petitioner be deported because "he has been found managing a house of prostitution". On August 13, 1927, the petitioner was given a hearing before the Secretary of Labor and the Board of Review, and the finding of the Immigrant Inspector was affirmed and a warrant issued for the deportation of the petitioner on August 13, 1927 (R. 27 and 28). The petitioner was arrested upon this warrant July 8, 1931, and thereupon filed a petition for the writ of habeas corpus (R. 1), and upon a hearing before Lowell, J., on the 27th day of July, 1931, the

petition was dismissed (R. 5). An appeal was taken to the Circuit Court of Appeals, and on February 25, 1932, the Circuit Court of Appeals handed down an opinion affirming the judgment of the District Court (R. 35).

CONTENTIONS OF THE PETITIONER.

1. There was not sufficient evidence in the record upon which the Secretary of Labor or the District Court could properly find that he was "managing a house of prostitution."

2. The petitioner contends that the Secretary of Labor and the Lower Courts misconstrued the law in holding that under the provisions of Section 19 of the Immigration Act of 1917, U. S. C. A., Title 8, Section 155, an alien found "managing a house of prostitution" might be deported irrespective of the time of his entry.

ARGUMENTS, POINTS AND AUTHORITIES.

CONTENTION I.

The first proposition involves a brief consideration of the facts.

The petitioner Alberto Costanzo is an alien immigrant now about thirty-one years of age (R. 1 and 8) hailing from Torre, Province of Caserta, Italy. He came to this country about the year 1905 (R. 4 and 9) at the age of five, and resided at Providence in the State of Rhode Island (R. 8). He was arrested in Providence, Rhode Island, November, 1926 (R. 8), charged with the offense of "harboring for prostitution"

(R. 8); pleaded not guilty, but upon advice of counsel changed his plea to nolo (R. 8) upon the promise that he would get a deferred sentence (R. 21).

On December 29, 1925, he was sentenced to three years in State's Prison (R. 8), and was paroled from State's Prison on May 24, 1927, (R. 15 and 21), having served about sixteen months.

At the time of the petitioner's arrest on July 8, 1931, he was working for his brother in a gasoline station at 778 Charles Street, Providence, Rhode Island, receiving $17 a week (R. 13). Before the petitioner was arrested by the State Authorities on a charge of harboring for prostitution, he had been working at twisting in a cotton mill (R. 21) and had worked steadily (R. 22).

The petitioner had leased a house at Saunderstown, Rhode Island (R. 19), intending to put up a gasoline station there, but could not get a permit. A lease, with the option of giving it up after two months or continuing a year, was obtained by him from the owner (R. 20). He let the place to one James Richie for $15 a week (R. 19), intending at the end of his option of two months to transfer the lease to Richie (R. 20). *Richie was indicted and sent to jail for running this house of prostitution* (R. 22).

The petitioner met a woman on the road, whom he did not know, and who asked him for a ride to Providence. She told the petitioner that she was married and not living with her husband, and said that she was going to this place at Saunderstown. The petitioner volunteered to take her down there, as he was going there to collect his rent (R. 16). He did not remain at the house that night. Three nights later he was in the house when the raid was made by the police (R. 16). On the night of the raid he was there collecting his

rent (R. 21). He did not induce the girl to go to the house or receive any money from her (R. 20). He had known the woman only four days before she was arrested (R. 23).

The petitioner made an arrangement with Richie that he would call at the house twice a week to sell him supplies (R. 22). Richie would telephone the petitioner, and he would buy the things that Richie wanted and take the things down to him, the petitioner having a machine. Richie did not have one, and the petitioner agreed to do this for him until he, Richie, had bought a machine (R. 23 and 19).

The petitioner denied categorically that he was running the house, or that he was employed there (R. 15). He did not have anything to do with the management or operation of the house. He did not get any money other than his rent (R. 19). He drove the girl down to the place, but did not have anything to do with inducing her to stay there (R. 20).

There was no other evidence to make out a case against the petitioner of "managing a house of prostitution". There is some prejudicial evidence in the record to the effect that the petitioner had served six months for the larceny of an automobile; that his wife had divorced him while he was serving time. The examining Immigrant Inspector and the Board of Review, meaning the Secretary of Labor, were not obliged to believe the petitioner's story, but they had no right, without other evidence, to believe and find that the opposite of the petitioner's story was true, *and there was no evidence to contradict the story.*

It is doubtful as to whether the petitioner could have been found guilty under the State law of Rhode Island of "harboring for prostitution", but that is quite a different thing from being guilty of the deportable charge of "managing a house of prostitution". The petitioner was not or-

dered deported upon the ground that he had been convicted of "harboring for prostitution" or stealing an automobile. Indeed, he could not have been deported upon these charges. The specific charge upon which the Secretary's order was based is "Charges: Found managing house of prostitution." (R. 25)

The evidence, while showing that the petitioner had some connection with the house, fell far short of showing him to have been the manager. "Manager," according to the Century Dictionary, is: "One charged with the management, direction, or control of an affair, undertaking, or business;".

In *Katz* v. *Commissioner of Immigration*, 245 Fed. 316, an alien was arrested, charged with deriving support from a prostitute. The Court said, "It is quite unreasonable to suppose that the dry goods salesman or the grocer, who sells his goods to a fallen woman and takes the price from her, or a cabman, who carries her for hire and receives the hire from her, or, as in the present case, the landlord, who rents her abode to her and takes rental therefor, all or any of them were designed to be classified as persons who receive or derive benefit from the earnings of a prostitute, and such, we are impressed, is not the intendment of the statute."

In *United States ex rel. Louros* v. *Lindsey*, 51 Fed. (2d) 303, an alien was arrested and charged with assisting a prostitute, although the alien had lived with this prostitute. It was held that he was not deportable under the Statute simply for giving or providing medicine or hospital treatment for her when she was ill.

Strench v. *Pedaris*, 55 Fed. (2d) 597, was a case where Pedaris was arrested for being an inmate in a house of pros-

titution, and ordered deported. He was released upon a habeas corpus, the only evidence against him being that he conducted a coffee shop in a building where he lived with his wife, she being a prostitute and practicing prostitution, there being no evidence that the alien was a pimp or in any manner profited from the prostitution practiced by his wife.

It will be noted that the petitioner is not charged with assisting a prostitute or being employed in a house of prostitution, and we assume had there been evidence of such charges it would have been introduced.

In *United States* v. *Lindsey*, 51 Fed. (2d) 141, the relator was arrested upon a warrant of deportation on the ground "he has been found managing a house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather". The relator apparently ran some sort of house where there was gambling, or liquor was sold, and which was frequented by lewd women. The Court here squarely held that the relator must be discharged, because upon such evidence he could not be found guilty of managing a house of prostitution.

There is no evidence upon which the Board of Review could base its conclusion (R. 28) to the effect, "In reviewing the evidence, it was found that he admitted having procured one girl as an inmate of a house of prostitution in which he was interested and which he was managing." There is absolutely no evidence of any such admissions in the record.

As to the correctness of the conclusion of the Board of Review or the Secretary, it appears (R. 29) that one Petrucione was arrested as being the actual manager of the resort said to have been owned by Costanzo, yet the warrant for his arrest and deportation was cancelled because there was no

evidence that prostitution was carried on at the place. The record in the Petrucione case showed that he had been convicted and sentenced on the charge of maintaining a common nuisance. While a common nuisance might mean a place where disorderly persons congregate, the conviction of Petrucione on that charge would not sustain the warrant.

Here stress is laid upon the allegation that Costanzo "owned the place". There is no such evidence. The evidence is that he leased the place and in turn let it to Richie who conducted the place at one time, and who was convicted for running the place as a disorderly house.

The law with regard to hearings in these cases is fully stated in *Kwock Jan Fat* v. *White*, 253 U. S. 454, at Page 457. "It is fully settled that the decision by the Secretary of Labor, of such a question as we have here, is final, and conclusive upon the courts, unless it be shown that the proceedings were 'manifestly unfair,' were 'such as to prevent a fair investigation,' or show 'manifest abuse' of the discretion committed to the executive officers by the statute (*Low Wah Suey* v. *Backus*, 252 U. S. 460), or that 'their authority was not fairly exercised; that is, consistently with the fundamental principles of justice embraced within the conception of due process of law.' *Tang Tun* v. *Edsell*, 223 U. S. 673, 681, 682, 56 L. ed. 606, 610, 32 Sup. Ct. Rep. 359. The decision must be after a hearing in good faith, however summary (*Chin Yow* v. *United States*, 208 U. S. 8, 12, 52 L. ed. 369, 370, 28 Sup. Ct. Rep. 201, *and it must find adequate support* in the evidence (*Zakonaite* v. *Wolf*, 226 U. S. 272, 274, 57 L. ed. 218, 220, 33 Sup. Ct. Rep. 31.)"

CONTENTION II.

The petitioner came to this country about the year 1905, when he was five years old (R. 8 and 9). He was actually arrested upon this charge July 8, 1931 (R. 1), although the warrant was issued the 16th day of March, 1926, while the petitioner was in prison (R. 4), so that at the time of arrest upon this warrant the petitioner had been in the United States about twenty-five years.

The question is, whether under the proper construction of Section 19 of the Immigration Act of 1917, U. S. C. A. Title 8, Section 155, he may be deported at any time after entry upon a charge of "found managing a house of prostitution".

No contention is here made that the warrant of deportation is in violation of Article 8 of Articles of Amendment to the Constitution of the United States, as was said by the Circuit Court of Appeals, "This contention is without merit". That contention must be and is abandoned.

The Circuit Court of Appeals held that the first clause in Section 19, as follows: "At any time within five years after entry", did not apply to "any alien who manages or is employed by, in or in connection with any house of prostitution", and that such an alien might be deported at any time. The Section is a rather long one and is printed in the appendix to this brief, as printed in the official compilation of the Immigration Laws.

The reasoning of the Court was based upon the authority of certain Circuit Court and District Court cases. Section 19 was intended to be and is a general Statute of Limitations as to causes of action (so to say) contained therein.

The heading of Section 19, as contained in Title 8, Section 155, U. S. C. A. is persuasive at least of that view; that

is to say, "DEPORTATION WITHIN CERTAIN TIME OF ALIENS ENTERING OR FOUND IN UNITED STATES IN VIOLATION OF LAW." This section contains ten semicolons, innumerable commas, and is tied together by the verb "shall" upon the warrant of the Secretary of Labor "be taken" into custody and "deported". The word "deported" is followed by a color, and then follows five provisos, separated by colons.

The authorities on punctuation say, among other things, "The semicolon is used between expressions in a series which have a common dependence on, or relation with, other words or expressions at the beginning or end of a sentence." Bigelow.

In *Grkic* v. *United States*, 3 Fed. (2d) 276, the Circuit Court of Appeals for the 7th Circuit, construing Section 19, said: "In punctuation, the semicolon is used to separate a completed thought in one clause from other related matter in another clause of the sentence. In Section 19 the semicolon has been used to separate the various classes subject to deportation."

See also *McLeod* v. *Nagle*, 48 Fed. (2d) 189.

The first clause of Section 19 is as follows: "At any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law;". That makes sense and is completed nine semicolons thereafter by the verb "shall be taken into custody and deported". This section applies to all persons who are excluded under Section 3 of the Act.

The period of limitation is enlarged in the third clause

or subdivision set apart with a semicolon, when it provides that, "any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States or of all forms of law or the assassination of public officials;". That is perfectly clear that that class of aliens may be deported irrespective of any time of entry.

The next clause set apart by a semicolon provides that "any alien who within five years after entry becomes a public charge from causes not affirmatively shown to have arisen subsequent to landing;". To complete the sentence should be added, "shall be taken into custody and deported".

The next subdivision provides that any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction of a crime involving moral turpitude, committed within five years after entry, or who is sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry;. Here one conviction and sentence of a crime involving moral turpitude must be committed within five years to subject the alien to deportation. If he is convicted twice for crimes involving moral turpitude, there the statute is enlarged again and he may be deported any time after entry. It is suggested that if the petitioner had been convicted of a crime of keeping a house of ill fame or disorderly house, which would be equivalent to managing such a house, and sentenced to a year, he could not be deported because it is more than five years after his entry into the United States. If he had been convicted twice of this offense and sentenced to less than a year on each, he could not be deported at any time.

The second clause following the last class and period of limitations established therein after a semicolon, is as follows: "any alien who manages or is employed by, in, or in connection with any house of prostitution", etc. ends with a semicolon without naming any period of limitation as to time. If Congress had meant to establish no time limit, it could have said so by the phrase used in the preceding sections, "at any time". *What period of limitation governs deportation for such an offense?* Now, did Congress mean by this clause dealing with an alien who is connected with the management of a house of prostitution or derives benefit from the earnings of a prostitute, or manages or is employed in a house of prostitution, or assists a prostitute, to qualify or extend the Section with reference to imprisonment? Certainly the two are inconsistent.

Again, another clause provides, "any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude;". No time limit is set out in that clause, but it was governed by the five year limit in the first clause because he was one of the excluded classes under Section 3. The only reason why such an alien may now be deported at any time is by reason of the act of 1924, Section 14, 43 Stat. at Large 153, which provides that any alien who at any time after entering the United States is found to have been at the time of entry not entitled under this Act to enter the United States—, shall be taken into custody and deported in the manner provided by Section 19, Act of February, 1917.

This would seem to be a clear interpretation by Congress that the first clause with regard to deportation of aliens who are within the excluded class was five years. The only way to extend the time would be by legislation.

The last clause is as follows: "at any time within three years after entry, any alien who shall have entered the United States" at a time and place other than designated by the Immigration Commissioner shall be deported.

The third proviso renders the interpretation of the Statute still more confusing, and provides further, "The provisions of this Section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States." That proviso would seem to repeal all of the periods of limitation set up in the several clauses. The rational interpretation of this proviso is that the provisions of the Act are retroactive except as to the exceptions named therein.

Judge Morton in his concurring and dissenting opinion in this case said: "As an original question this construction of the statute seems to me erroneous, and the view of it taken in *Hughes, Commissioner*, v. *Tropello*, 296 F. R. 306," which he followed in *Di Pierro* v. *Tillinghast*, 45 Fed. (2d) 658, to be the correct view. That is, that the five year limitation governed. His opinion is elaborated in the *Di Pierro* case which was overruled by the Circuit Court of Appeals for the First Circuit, 54 Fed. (2d) 459.

Judge Morton said in that case, "Section 19 is long, covering more than a page in the Statutes at Large. It begins, 'That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law.' Then follow nine distinct clauses separated by semicolons providing that 'any alien who' has done or shall do certain acts 'shall, upon the warrant of the Secretary of Labor, be taken into custody and deported.' The words 'any alien' in the opening clause and in each of the clauses referred to are subjects of the verbs

'shall be taken,' etc., which follow the last clause. Before the words 'any alien' in the ninth clause are the words, 'at any time within three years after entry'; these words modify the time provision in the first line. The sentence is truly Germanic in its length and complication. It seems to me to have been the intention that the words, 'at any time within five years after entry' in the first line should apply to and cover the eight following clauses, until we reach the words 'at any time within three years after entry,' which changes the period of limitation. No other construction makes the section grammatical."

In the instant case Judge Morton said, "Inasmuch, however, as the semicolons are interposed between the different subjects of the common verb and the verb itself, their use is so unorthodox as to furnish little guide in interpreting the section. They are really used like commas, and I do not think they separate the important words with which the section begins from the verb 'shall . . . be taken into custody and deported,' with which the sentence concludes, nor from the intermediate clauses which do not contain their own limitation provisions, or which are not governed by the three-year limitation."

A case following Judge Morton's construction, is *Hughes* v. *Tropello,* 296 Fed. 306. This case contains a long discussion of the subject. Tropello had been excluded from deportation on the ground that he was feeble minded on November 12, 1915. He was permitted to land on a bond, went to reside with his mother in Philadelphia. In April, 1919, a warrant of arrest was issued. The alien was taken into custody on the ground that he was in the United States in violation of the Immigration Act of 1917. The proceedings resulted in an order of deportation dated April 5, 1921. The Court held

that the proceedings must be begun within five years; otherwise the Statute of Limitations would avail nothing.

CASES RELIED UPON BY THE GOVERNMENT.

Ex Parte Gin Kato, 270 Fed. 343, is a District Court case, less than a page, where an alien was found employed in or in connection with a house of prostitution. The facts contained in the opinion are rather meager. Apparently the alien came into the United States in 1884, and this case came up in 1920. The Court relied upon the proviso: "The provisions of this section—shall be applicable to the classes of aliens therein mentioned, irrespective of the time of their entry into the United States—".

Lauria v. *United States,* 271 Fed. 261, United States Circuit Court of Appeals for the 2nd Circuit. There the petitioner for the writ of habeas corpus was shown to have been convicted of a crime involving moral turpitude before his entry into the United States. He entered the United States in 1910. There the Court held, "Congress intended by Section 19 to extend the time for deportation to the specific cases mentioned beyond the five year period, and that the aliens might be taken into custody and deported at any time." The Court here also relied upon the third proviso. This case is not helpful because there would be no doubt about the law now, under the Amendment of 1924.

Ranieri v. *Smith,* 49 Fed. (2d) 537. This was a District Court case. An alien entered the United States June 21, 1924. On December 19, 1929, he was arrested by an Immigration Inspector upon a warrant which charged him with managing a house of prostitution, etc. The Judge, in that case, simply

held that the evidence supported the finding and without any discussion on the construction of the Statute, said, "The evidence abundantly supports the finding, and the five year Statute of Limitations does not apply". Citing, *Ex parte Gin Kato*, 270 Fed. 343. *Cafaro* v. *Tillinghast*, 31 Fed. (2d) 384. *Pillisz* v. *Smith*, 46 Fed. (2d) 769.

Pillisz v. *Smith*, 46 Fed. (2d) 769, Circuit Court of Appeals for the 7th Circuit. There the petitioner was admitted June 26, 1922. On October 3, 1929, he was arrested on a warrant charging him with having been convicted of manslaughter, a crime involving moral turpitude prior to his entry. In this case the Court held that there were twelve different groups in Section 19, which are subject to deportation, and limitations as to time are separately stated in five, "viz: 1, 3, 4, 5 and 12 (our numbers)." As to the other seven there is no limitation of time specified in the clauses which describe the classes. The Court held squarely that where there was no time limit specified that the alien "might be taken into custody and deported at any time." No authority cited for that position.

Weedin v. *Yamada*, 4 Fed. (2d) 455, Circuit Court of Appeals, 9th Circuit. Yamada entered the United States in 1902. His entry at the time was lawful. He resided here until 1907, when he entered a plea of guilty to an information charging him with the crime of assault with a deadly weapon with intent to inflict bodily harm. He was sentenced to imprisonment to the state penitentiary for the term of two years. In 1908 he was paroled and continued to reside in the United States until 1913. Then he made a trip to Japan, visited his parents and returned to the United States in 1914

with a passport, and continued to reside in the United States until 1924, when a warrant was issued by the Secretary for his arrest on the ground that he had admitted the commission of a felony involving moral turpitude prior to his entry to the United States. There the crime was committed in the United States, and more than five years had elapsed.

The petitioner there claimed that he was protected by the five year limitation. It was admitted that the petitioner was one of the classes excluded by Section 3, but the Court there concluded that he also belonged to the special class for which no time limit is fixed.

The Court said, "We think Congress intended to pronounce classes of aliens who are undesirable and, by general provision of law, exclude all within five years, but provided specifically that certain classes, including the class to which the appellant belongs, might be taken into custody and deported at any time." It is going a long way to say that Congress in the first clause gave the petitioner the benefit of the five-year Statute of Limitations, and in another clause took it away from him. The two cannot stand together and cannot be reconciled.

McLeod v. *Nagle*, 48 Fed. (2d) 189, Circuit Court of Appeals, 9th Circuit. This is a case of a conviction of a crime involving moral turpitude prior to entry. This case was decided in 1931, and is not helpful. There the Court admits that the petitioner was one of the excluded class, which would put him within the five year limitation, but he was in the special class also. After a long discussion of punctuation marks, the Court bases its final decision upon the proviso, "The provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry".

CONCLUSION.

The petitioner put his case as strongly as it could be made when asked: (R. 24), Q. 173. "What further have you to say as to why you should not be deported in conformity with law?

A. "I have got nowhere to go to; I was a boy when I came here; I never refused to do anything the law wished, and I would be willing to go to the front, willing to be sent to the army now in place of deportation; I respect the United States and I feel it is my country, as I came here as a small boy."

Judge Morton, in his concurring and dissenting opinion, (R. 39) said: "There are possibilities of shocking cruelty, as the cases show, in a deportation statute having no period of limitation. There are the same humanitarian reasons for limitation of the right to deport as there are for limitation on prosecutions for crime. It seems to me that section 19 is a recognition of this fact and is intended as a general statute of limitations on deportations."

This alien knows no country except the United States. His virtues and his vices were all acquired in America. If a man came here when he was five years of age and lived to 90, and if in his 89th year he was "found managing a house of prostitution", he might be deported. A statute of limitations was meant to be a forgiveness of sin.

II.

All the evidence in this case, except the records of the commission of crimes which have nothing to do with the excluding decision, comes from the lips of the petitioner. He

was working steadily, before circumstances out of which this warrant arose, in a cotton mill, and working, after he was paroled before his arrest on this warrant, at a gasoline station. Whatever his connection with the house in Saunderstown was, it cannot be said, except by adding to the evidence not in the record, that he was in any sense a manager of the place. Moreover, two other persons, Richie and Petrucione, were convicted of running this place.

If the Court should be satisfied, it need not go further to consider the second perplexing contention, meaning the Statute of Limitations.

III.

It is perfectly clear that in cases where Congress meant that there should be no period of limitation, it said so. An alien, advocating the teaching of anarchy or the overthrow of government, etc.,—an alien sentenced twice for more than a year for the commission of a crime involving moral turpitude.

Congress by Section 14 of the Act of 1924 enlarged the time limit as to the excluded classes from five years to any time,—"Any alien who at any time after entering the United States is found to have been at the time of entry not entitled under this Act to enter the United States—shall be taken into custody and deported." That amendment carries with it the clause, "Any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude;" because such an alien would be within the excluded classes of Section 3 of the Act of February 5, 1917.

The proviso that "The provisions of this Section, with

the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States". If it is not a provisions making the Act retroactive except as to those arrested and convicted once or twice for a crime involving moral turpitude, it would repeal all of the periods of limitation set up in the main body of the clause. Generally speaking, a proviso is to restrict its operation, and not to enlarge it.

Respectfully submitted,

WILLIAM H. LEWIS.

APPENDIX.

Sec. 19. That at any time within five years after entry, any alien who at the time of entry was a member of one of more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this act, or in violation of any other law of the United States; any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States or of all forms of law or the assassination of public officials; any alien who within five years after entry becomes a public charge from causes not affirmatively shown to have arisen subsequent to landing; except as hereinafter provided, any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who

is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry; any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; any alien who manages or is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists any prostitute or protects or promises to protect from arrest any prostitute; any alien who shall import or attempt to import any person for the purpose of prostitution or for any other immoral purpose; any alien who, after being excluded and deported or arrested and deported as a prostitute, or as a procurer, or as having been connected with the business of prostitution or importation for prostitution or other immoral purposes in any of the ways hereinbefore specified, shall return to and enter the United States; any alien convicted and imprisoned for a violation of any of the provisions of section four hereof; any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude; at any time within three years after entry, any alien who shall have entered the United States by water at any time or place other than as designated by immigration officials, or by land at any place other than one designated as a port of entry for aliens by the Commissioner General of Immigration, or at any time not designated by immigration officials, or who enters without inspection, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported: *Provided,* That the marriage to an American cit-

izen of a female of the sexually immoral classes the exclusion or deportation of which is prescribed by this act shall not invest such female with United States citizenship if the marriage of such alien female shall be solemnized after her arrest or after the commission of acts which make her liable to deportation under this act: *Provided further*, That the provision of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned, nor shall such deportation be made or directed if the court, or judge thereof, sentencing such alien for such crime shall, at the time of imposing judgment or passing sentence or within thirty days thereafter, due notice having first been given to representatives of the State, make a recommendation to the Secretary of Labor that such alien shall not be deported in pursuance of this act; nor shall any alien convicted as aforesaid be deported until after the termination of his imprisonment: *Provided further*, That the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States: *Provided further*, That the provisions of this section shall also apply to the cases of aliens who come to the mainland of the United States from the insular possessions thereof: *Provided further*, That any person who shall be arrested under the provisions of this section, on the ground that he has entered or been found in the United States in violation of any other law thereof which imposes on such person the burden of proving his right to enter or remain, and who shall fail to establish the existence of the right claimed, shall be deported to the place specified in such other law. In every case where any person is ordered deported from the United States under the provisions of this act, or of any law or treaty, the decision of the Secretary of Labor shall be final.